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23 and VALEANT PHARMACEUTICALS INTERNATIONAL, INC.

24 SEE ADDITIONAL COUNSEL ON PAGE 2

25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 ALLERGAN USA, INC., and
28 ALLERGAN INDUSTRIE, SAS,

Plaintiffs,

v.

MEDICIS AESTHETICS, INC.,
MEDICIS PHARMACEUTICAL CORP.,
VALEANT PHARMACEUTICALS
NORTH AMERICA LLC,
VALEANT PHARMACEUTICALS
INTERNATIONAL, and
VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.

Defendants.

Case No. 8:13-cv-01436 AG (JPRx)

**S.P.R. 3.4 JOINT CLAIM
CONSTRUCTION AND
PREHEARING STATEMENT**

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and VALEANT PHARMACEUTICALS INTERNATIONAL, INC.

1 Pursuant to Standing Patent Rule 3.4, Plaintiffs Allergan USA, Inc. and
 2 Allergan Industrie, SAS (“Plaintiffs” or “Allergan”) and Defendants Medicis
 3 Aesthetics, Inc., Medicis Pharmaceutical Corp., Valeant Pharmaceuticals North
 4 America LLC, Valeant Pharmaceuticals International, and Valeant Pharmaceuticals
 5 International, Inc. (“Defendants”) hereby submit their Joint Claim Construction and
 6 Prehearing Statement.

7 **I. THE PARTIES’ AGREED CONSTRUCTIONS**

8 **A. The ’475 Patent**

9 The parties have agreed to the following constructions for these terms in U.S.
 10 Patent No. 8,450,475 (“the ’475 patent”):

Claim Term (claim)	Agreed Construction
sterile (claims 1, 18, 27, 34)	substantially free of detectable, viable microorganisms
degree of crosslinking (claims 5-7, 18, 27, 31, 37)	the percent weight ratio of crosslinking agent to HA monomeric units (HA disaccharide units) within the crosslinked portion of the HA based composition (i.e., (total mass of crosslinking agent / total mass of monomeric units) * 100)) The “crosslinked portion of the HA based composition” as used herein has the same construction as the other terms referring to “crosslinked HA,” as construed by the Court.
[X]% uncrosslinked HA by volume (Claims 1, 2, 33, 36)	the percent weight ratio of uncrosslinked HA in a filler composition (i.e., ((mass of uncrosslinked HA in the composition / mass of total HA in the composition)*100) Uncrosslinked HA as used herein has the same construction as the “uncrosslinked

[X]% free HA by volume (Claims 27)	"HA" term, as construed by the Court. the percent weight ratio of free HA in a filler composition (i.e., ((mass of free HA in the composition / mass of total HA in the composition)*100) Free HA as used herein has the same construction as the "free HA" term, as construed by the Court.
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B. The '795 Patent

The parties have agreed to the following constructions for these terms in U.S. Patent No. 8,357,795 patent ("the '795 patent"):

Claim Term (claim)	Agreed Construction
sterile (claim 1)	substantially free of detectable, viable microorganisms
lidocaine is freely released in vivo (claim 1)	plain and ordinary meaning
extrusion force (claim 41)	the force that one must apply to expel a soft tissue filler composition through the needle in its assembled, intended delivery system

II. THE PARTIES' PROPOSED CONSTRUCTIONS FOR DISPUTED CLAIM TERMS AND SUPPORTING EVIDENCE

The Parties' proposed constructions for the disputed claim terms in the '475 patent, along with an identification of supporting intrinsic and extrinsic evidence, is attached as Exhibit A. The Parties' proposed constructions for the disputed claim terms in the '795 patent, along with an identification of supporting intrinsic and extrinsic evidence, is attached as Exhibit B.

1 **III. LIST OF SIGNIFICANT TERMS**

2 The parties jointly identify the following terms as those for which
3 construction is most significant to the case:

- 4 1. stable
- 5 2. HA crosslinked with 1,4 butanediol diglycidyl ether (BDDE);
6 hyaluronic acid (HA) component crosslinked with 1,4-butanediol diglycidyl
7 ether (BDDE);
8 (BDDE)-crosslinked hyaluronic acid¹
- 9 3. hyaluronic acid (HA) component crosslinked with a crosslinking agent²
- 10 4. uncrosslinked HA; free HA³

11 **IV. PRESENTATION TIME FOR CLAIM CONSTRUCTION HEARING**

12 Allergan does not anticipate needing more than 45 minutes total for all its
13 presentation at the claim construction hearing.

14 Defendants do not anticipate needing more than 45 minutes total for all its
15 presentation at the claim construction hearing

16 **V. WITNESSES TO BE CALLED AT THE CLAIM CONSTRUCTION
17 HEARING**

18 Allergan does not propose to call any witnesses at the claim construction
19 hearing.

20 Defendants do not propose to call any witnesses at the claim construction
21 hearing.

22
23
24 ¹ The parties have agreed that these three terms, which appear in the asserted claims
25 of the '475 patent, should be construed the same.

26 ² The parties' proposed construction for this term, which appears in claim 1 of the
27 '795 patent, should be construed consistently with the corresponding terms of the
28 '475 patent, except for the identification of a specific crosslinking agent (BDDE)
('475 patent) versus any crosslinking agent ('795 patent).

³ The parties have agreed that these terms, which appear in the asserted claims of the
28 '475 patent, should be construed the same.

1 Dated: June 6, 2014

2 By: /s/ Elizabeth M. Flanagan
3 Elizabeth M. Flanagan

4 Attorney for Plaintiffs

5 Dated: June 6, 2014

6 By: /s/ William F. Schmedlin
7 William F. Schmedlin

8 Attorney for Defendants

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-4.3.4(a)(2), I attest that counsel for Defendants has authorized the filing of this document.

/s/ Elizabeth M. Flanagan
Elizabeth M. Flanagan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 6, 2014 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Elizabeth M. Flanagan
Elizabeth M. Flanagan